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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,225	01/04/2002	Peter J. Potrebic	MS1-1050US	7273
22801	7590	10/07/2004	EXAMINER	
LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201			LEE, MICHAEL	
			ART UNIT	PAPER NUMBER

2614

DATE MAILED: 10/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/039,225	Applicant(s) POTREBIC ET AL.	
	Examiner M. Lee	Art Unit 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2002.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 6-22 and 30-33 is/are allowed.
6) ☒ Claim(s) 1,3 and 23-29 is/are rejected.
7) ☒ Claim(s) 2,4 and 5 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Saito et al. (4,272,784).

Regarding claim 1, Saito discloses a channel programming apparatus (Figure 3) showing a plurality of channel selecting switches (S1-Sn), which meets the first and second channel request receiving steps as claimed, transistors TB1-TBn for tuning channels in tuner 33B when the switch 4 is not in the record mode, which meet the first tuner assigning steps as claimed, and transistors TA1-TAn for tuning channels in tuner 33A when the switch 4 is in the record mode, which meet the second tuner assigning step as claimed (see columns 5 and 6 for detail description of operations of the tuners).

Regarding claim 3, the tuners in Saito are intended to use in television set top box area since a set top box includes at least one tuner.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pauley et al. (6,188,448).

Regarding claim 23, Pauley shows a first tuner (84), a second tuner (94), and a tuner controller (110) for preventing the first and second tuner for tuning the same channels (see Figure 4), except the disk drive as claimed. The examiner takes Official Notice that using a disk drive to store video data is well known in the art for its random access characteristics, which means faster access speed than video tape recorders. Since the video data received by the tuners in Pauley is needed to store for later viewing, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to include a disk drive into Pauley so that the video data could be access quickly and randomly.

Regarding claims 24, 25 and 26, the tuners 84 and 94 inherently include decoders.

Regarding claim 27, see col. 5, lines 22-35.

Regarding claim 28, Pauley indicates that the tuner 71 can tune different movies channels (see col. 5, lines 13-21).

5. Claims 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pauley et al. (6,188,448) in view of Saito et al. (4,272,784).

Regarding claim 29, Pauley does not specify that the controller is configured to assign the second tuner to tune a new channel in response to a request to change channels if the program tuned by the first tuner is being recorded as claimed. As aforementioned, it would have been obvious to include a disk drive into Pauley to record

television programs for later viewing; however, the recording process in Pauley could be interrupted during the recording period. Saito, from the similar field of endeavor, discloses a recording interruption preventing mechanism. By including such mechanism, a tuner would not be interrupted during recording mode and hence a whole program can be recorded flawlessly. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to include Saito into Pauley so that a television program could be recorded smoothly.

Allowable Subject Matter

6. Claims 2, 4 and 5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 6-22, and 30-33 are allowed.

8. The following is a statement of reasons for the indication of allowable subject matter: Prior art does not teach the determining step as recited in claim 2, the third tuner as recited in claims 4 and 5, the determining step as recited in claim 6, the determining steps as recited in claim 10, the receiving steps and assigning steps, the switching step, and the displaying step as recited in claim 14, and the determining step as recited in claim 30.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lee et al. (5,757,441) shows two tuners.

Art Unit: 2614

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Lee whose telephone number is 703-305-4743. The examiner can normally be reached on Monday through Thursday from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller, can be reached on 703-305-4795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



M. Lee
Primary Examiner
Art Unit 2614